

STATE OF MICHIGAN  
COURT OF APPEALS

---

In the Matter of J.M. and J.M., Minors.

---

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

WILLIAM MOORE,

Respondent-Appellant.

---

UNPUBLISHED

December 17, 2002

No. 239141

Washtenaw Circuit Court

Family Division

LC No. 00-024905-NA

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Respondent claims an appeal from the trial court's order terminating his parental rights to his children pursuant to MCL 712A.19b(3)(k)(ii).<sup>1</sup> We affirm.

Respondent's children and his stepchildren were removed from his custody on the ground that he sexually abused one of the stepchildren. Respondent pleaded guilty of multiple counts of criminal sexual conduct in the second degree, MCL 750.520c, and was sentenced to three years, seven months to fifteen years in prison. Petitioner sought termination of respondent's parental rights to his biological children pursuant to MCL 712A.19b(3)(h), imprisonment, (j), likelihood that child would be harmed if returned to respondent's custody, (k)(ii), conduct involving penetration, attempted penetration, or assault with intent to penetrate, and (n)(i), commission of felony coupled with finding that termination of the parent-child relationship was in child's best interest because continuation of that relationship would be harmful to the child. The trial court terminated respondent's parental rights under MCL 712A.19b(3)(k)(ii) only, and found that termination of respondent's parental rights was in the children's best interests.

We review a trial court's decision to terminate parental rights for clear error. MCR 5.974(I); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that the petitioner has proven by clear and convincing evidence the existence of one

---

<sup>1</sup> The children and their half siblings were placed with their mother, who was not a party to these proceedings.

or more statutory grounds for termination, the court must terminate parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 352-353; 612 NW2d 407 (2000). We review the trial court's decision regarding the child's best interests for clear error. *Id.*, 356-357.

We hold that the trial court did not clearly err in finding that petitioner established by clear and convincing evidence the existence of a statutory ground for the termination of respondent's parental rights, or that termination of respondent's parental rights was in the children's best interests. After the trial court found that petitioner established by clear and convincing evidence the existence of a statutory ground for the termination of respondent's parental rights, a finding that respondent does not contest, the trial court was required to terminate respondent's parental rights unless it found that termination was clearly not in the children's best interests. *Id.*, 353-354. In considering whether a statutory ground for termination existed under MCL 712A.19b(3)(n)(i), the court opined that if respondent continued to seek therapy and to show remorse for his actions, he could serve as a positive role model to his children notwithstanding the fact that he was imprisoned.

However, in considering the best interests question under MCL 712A.19b(3)(k)(ii), the trial court acknowledged that if respondent was released while his children were still minors and if his therapy was not successful, he could prove to be a threat to his children. The trial court concluded that because the outcome was simply unpredictable, it could not find that termination of respondent's parental rights was not in the children's best interests. The trial court analyzed different questions (i.e., clear and convincing evidence of a statutory ground for termination versus the best interests of the children) with different standards. The evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *Trejo, supra*.

Affirmed.

/s/ Donald S. Owens  
/s/ William B. Murphy  
/s/ Mark J. Cavanagh